

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

City of Hampton
22 Lincoln Street
4th Floor, City Hall
Hampton, Virginia 23669

Respondent.

Proceeding to Assess a Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Docket No.: CWA-03-2013-0095

**CONSENT AGREEMENT
AND FINAL ORDER**

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2013 JUN 17 PM 2:57

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I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and the City of Hampton ("Hampton" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

5. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.

3. Pursuant to 40 C.F.R. §122.26(a)(3), NPDES Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems ("MS4").

4. Respondent is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

5. Respondent is therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

6. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

7. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).

8. MS4 includes, *inter alia*, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

9. A medium MS4 means “all separate storm sewers that are: (i) Located in an incorporated place with a population of 100,000 or more but less than 250,000 ... ; [or] (ii) Located in the counties listed in appendix I ... [or] (iii) Owned or operated by a municipality other than those described in paragraph (b) (7)(i) or 9(ii) of this section and that are designated by the Director as part of a large or medium municipal separate storm sewer system...” 40 C.F.R. § 122.26(b)(7).

10. Respondent’s population at the time of the inspection was approximately 136,000, and Respondent is therefore a medium MS4

11. Therefore, Hampton is a medium MS4 within the meaning of 40 C.F.R. § 122.26(b)(7).

12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975.

13. On March 8, 2001, VADEQ issued Permit VA0088633 (the “MS4 Permit”) to Hampton to govern the discharge of storm water through the City’s MS4.

14. The Permit requires Respondent to adhere to the Storm Water Management Program Requirements (Part I) and Conditions Applicable To All VPDES Permits (PART II) of the Permit.

15. On March 31 and April 1, 2010 EPA conducted an inspection of Hampton’s MS4 Program and its compliance with Permit VA0088633.

16. On September 28, 2011 EPA issued an Administrative Order and Request for Information to the City of Hampton, Docket No.: CWA-03-2011-0311DN, in relation to the inspection findings.

17. On November 28, 2011, EPA received Hampton’s response to the Administrative Order and Request for Information, Docket No.: CWA-03-2011-0311DN.

III. FINDINGS OF VIOLATION

1. The Permit requires Respondent to, among other things: (1) Conduct erosion and sediment control inspections of construction sites within 48 hours following any runoff producing storm event; (2) Provide copies of the erosion and sediment control inspection reports to construction site contractors; and (3) Comply with all stormwater related ordinances.

2. The March 31, 2010 inspection and Hampton's November 28, 2011 response revealed that, as of November 28, 2011, Respondent had failed to: (1) Conduct erosion and sediment control inspections of construction sites within 48 hours following any runoff producing storm event; (2) Provide copies of the erosion and sediment control inspection reports to construction site contractors; and (3) Comply with all stormwater related ordinances.

3. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

1. Respondent admits the jurisdictional allegations of the Complaint and the Findings of Fact and Conclusions of Law set forth in Section II, above.

2. Respondent neither admits nor denies EPA's Findings of Violation set forth in Section III, above.

3. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

4. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

5. Each party to this action shall bear its own costs and attorney fees.

6. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

7. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

8. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA

has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Virginia official.

9. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of sixty two thousand dollars (\$62,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

10. Respondent shall pay the total administrative civil penalty of sixty two thousand dollars (\$62,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CWA 03-2013-0095, Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Mark Bolender, Esquire
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

12. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

13. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

14. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

15. The penalty specified in Section III, Paragraph 9, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

16. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

17. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

18. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

1. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after the conclusion of a 40- day public notice period. This CAFO will become final and effective 30 days after issuance, 33 U.S.C. § 1319(g)(4), 40 C.F.R. § 22.31(b).

FOR RESPONDENT, CITY OF HAMPTON:

Date: 2/20/13

By: Mary Bunting
Mary Bunting, City Manager


CITY OF HAMPTON
OFFICE OF THE CITY ATTORNEY

Approved as to legal form and sufficiency

Date: 2.15.2013
[Signature]
Attorney

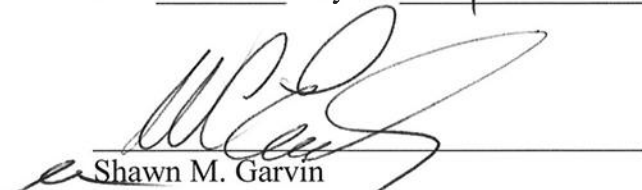
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: April 19, 2013


Jon M. Capacasa, Director
Water Protection Division
U.S. EPA Region III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 23RD day of April, 2013


Shawn M. Garvin
Regional Administrator
U.S. EPA Region III